

[REDACTED]  
Internal Revenue Service  
District

[REDACTED]  
Department of the Treasury  
P.O. Box 2508  
Cincinnati, OH 45201

Person to Contact:

[REDACTED]  
Telephone Number  
[REDACTED]

Refer Reply to:

[REDACTED]  
Employer Identification Number:

Date: JAN 24 1997

Dear Sir or Madam:


We have considered your application for recognition of exemption from Federal income tax under the provisions of section 501(c)(4) of the Internal Revenue Code of 1986 and its applicable Income Tax Regulations. Based on the available information, we have determined that you do not qualify for exemption under section 501(c)(4) for the reasons set forth in Enclosure I.

Consideration was given to whether you qualify for exemption under other subsections of section 501(c) of the Code and we have concluded that you do not.

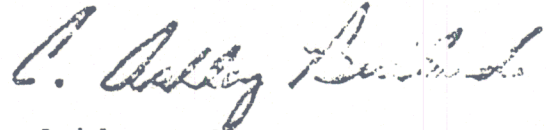
As your organization has not established exemption from Federal income tax, it will be necessary for you to file an annual income tax return on Form 1120 since you are a corporation.

If you are in agreement with our proposed denial, please sign and return one copy of the enclosed Form 6018, Consent to Proposed Adverse Action.

You have the right to protest this proposed determination if you believe that it is incorrect. To protest, you should submit a written appeal giving the facts, law and other information to support your position as explained in the enclosed Publication 892, "Exempt Organizations Appeal Procedures for Unagreed Issues". The appeal must be submitted within 30 days from the date of this letter and must be signed by one of your principal officers. You may request a hearing with a member of the office of the Regional Director of Appeals when you file your appeal. If a hearing is requested, you will be contacted to arrange a date for it. The hearing may be held at the Regional Office, or, if you request, at any mutually convenient District Office. If you are to be represented by someone who is not one of your principal officers, he or she must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements as set forth in Section 601.502 of the Statement of Procedural Rules. See Treasury Department Circular No. 230.

  
If we do not hear from you within the time specified, this will become our final determination.

Sincerely yours,



C. Ashley Bullard  
District Director

Enclosures: 3

ENCLOSURE I

[REDACTED]  
[REDACTED]  
The information you submitted indicates you were incorporated on [REDACTED] in [REDACTED]. You filed Form 1024, Application for Recognition of Exemption under section 501(a) of the Internal Revenue Code of 1986 on [REDACTED].

The Articles of Incorporation state that the purposes for which the Association was organized are:

(a)..."to provide non-profit recreational and property management services for its members."

(b)..."to provide (to the extent required by its members pursuant to recorded covenants) for management, maintenance preservation and architectural control of the units, recreational and common area from time to time constructed within that certain parcel of real property..."

Your application states that your organization exists to administer and enforce protective covenants designed to preserve the character of the community of [REDACTED] and that membership in the association is mandatory for property owners, and not available to the general public.

Among the facilities that you maintain are common areas, generally accessible to the public, and areas that are generally restricted to owners and their guests. Among those facilities that are generally restricted are a building housing fitness equipment, a building housing games, a pool and spa, and a golf course. Ten tennis courts maintained by the association are made available to the public in the off season (after Labor Day and before mid-June.) Promotional literature attached to your application indicates that the golf course may be available to the public, but at higher fees than those charged to owners.

The financial information you submitted indicates that you are primarily supported by member dues and assessments and contributions from the developer of [REDACTED]. Your funds are expended for such items as general maintenance, insurance, transportation, security, summer programs and pool and spa expenses.

Section 501(c)(4) of the Internal Revenue Code of 1986 recognizes civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare as exempt from Federal income taxes.

Section 1.501(c)(4)-1(a)(1) of the Income Tax Regulations states that a civic organization may be exempt if:

- (i) It is not organized or operated for profit; and
- (ii) It is operated exclusively for the promotion of social welfare.



[REDACTED]

Section 1.501(c)(4)-1(a)(2)(i) of the Regulations states, in general that an organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community. An organization embraced within this section is one which is operated primarily for the purpose of bringing about civic betterment and social improvements.

Section 1.501(c)(4)-1(a)(2)(ii) of the Regulations provides that an organization is not operated primarily for the promotion of social welfare if its primary activity is operating a social club for the benefit, pleasure, or recreation of its members.

Specifically under section 501(c)(4) of the Code, a homeowners' association must operate for the benefit of the general public, i.e., it must provide a community benefit. Our position regarding the exemption of homeowners' associations under section 501(c)(4) is set forth in a number of Revenue Rulings.

Revenue Ruling 74-99, 1974-1 C.B. 131 describes the circumstances in which a homeowners' association may qualify for exemption under section 501(c)(4) of the Code. The ruling states that three elements must be satisfied:

- 1.) It must serve a "community" which bears a reasonable recognizable relationship to an area ordinarily identified as governmental.
- 2.) It must not conduct activities directed to the exterior maintenance of private residences.
- 3.) The common areas or facilities it owns and maintains must be for the use and enjoyment of the general public.

The ruling also states that a "community" within the meaning of section 501(c)(4) of the Code is not merely "an aggregation of homeowners bound together in a structured unit formed as an integral part of a plan for the development of a real estate subdivision and the sale and purchase of homes therein."

In addition, the ruling makes clear that when such an association is formed for the preservation of the architecture and appearance of a development, it creates a prima facie presumption that the association exists for the benefit of the members and the developer. The association must then overcome that presumption in order to qualify for exemption under section 501(c)(4).

Revenue Ruling 80-63, 1980-1 C.B. 116, further clarified the meaning of "common areas" for the purpose of Rev. Rul. 74-99 by specifically including recreational facilities within the definition of "common areas."

[REDACTED]  
[REDACTED]

Based on the above facts and upon the applicable law and precedent, you fail to qualify for exemption under section 501(c)(4) because the your recreational facilities are substantially restricted to use by your members.

In this respect you are similar to the organizations denied exemption in Rev. Rul. 74-99, 1974-1 C.B. 131 and Rev. Rul. 80-63, 1980-1 C.B. 116.